IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

MFA.No. 242 of 1993(E)

APPELLANT/APPLICANT:

BATTU POOJARI
S/O.SUBBA POOJARI
KIDOOR VILLAGE
ICHILAPADI (PO)
KASARAGOD

BY ADV. SRI.M.SASINDRAN

RESPONDENT/OPPOSITE PARTY:

D.KRISHNAPPA POOJARI
KHARAMBALA HOUSE
KIDOOR VILLAGE
ICHILAMPADI (PO)
KASARAGOD

BY ADV. SRI.V.V.ASOKAN
SMT.ASHA SUNDARAM
GOVERNMENT PLEADER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

M.F.A.NO.242 OF 1993 (E)

Dated this the 12 th day of February, 2007.

J U D G M E N T

Applicant in W.C.60/1991 before Commissioner for Workmen's Compensation, Kannur, is the appellant. The Commissioner dismissed the application holding that first respondent was no more and second respondent was impleaded only as the power of attorney holder of first respondent after the death of first respondent and that power of attorney ceased to operate on the death of first respondent and therefore the petition is not maintainable. The order is challenged contending that after the death of first respondent, second respondent continued to run the toddy shop and therefore the commissioner should have granted the compensation sought for.

2. Learned counsel appearing for petitioner and respondent were heard.

3. Order passed by commissioner reveals the position. After the death of original respondent, his legal heirs were not impleaded. Respondent herein was impleaded as second respondent on the basis of the power of attorney executed by deceased earlier. That power of attorney ceased to operate on the death of first respondent. As rightly found by the commissioner, on the death of the sole

respondent, remedy of appellants is against legal heirs of the deceased respondent. In spite of the objection raised by second respondent, appellant did not implead the legal heirs. In such circumstances the dismissal of the application cannot be avoided. Even though learned counsel appearing for appellant sought remand of the case to commissioner for Workmen's Compensation, I do not find that interest of justice warrants a remand. The fact that legal heirs of original respondent were not impleaded and the remedy of the appellant if any is against the legal heirs of original respondent were brought to the notice of the appellant when the case was pending before the commissioner for Workmen's Compensation Commission. In spite that the appellant did not take any steps. It is now too late to contend that another opportunity has to be granted. No substantial question of law arises in the appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

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